



STATUTORY INSTRUMENTS.

S.I. No. 708 of 2022



EUROPEAN UNION (PLANNING AND DEVELOPMENT) (HABITATS
AND ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS 2022

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I, DARRAGH O'BRIEN, Minister for Housing, Local Government and Heritage, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Council Directive 92/43/EEC of 21 May 1992¹ and Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011², as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014³, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Planning and Development) (Habitats and Environmental Impact Assessment) Regulations 2022.

Definition

2. In these Regulations, “Act of 2000” means the Planning and Development Act 2000 (No. 30 of 2000).

Amendment of section 173A of Act of 2000

3. Section 173A of the Act of 2000 is amended –
- (a) in subsection (1) –
 - (i) in the definition of “application for a licence”, by the substitution of “a licence” for “an integrated pollution prevention and control licence”, and
 - (ii) in paragraph (c) of the definition of “application for permission”, by the insertion of “181(2A),” after “177AE,”,
 - (b) in subsection (2) –
 - (i) by the insertion of “or, in the case of an application for approval under section 181(2A), the applicant for a licence under Part IV of the Act of 1992 in respect of an activity to which the application for approval relates,” after “applicant for a grant of permission”, and

¹ OJ No. L. 206, 22.7.1992, p.7.

² OJ No. L. 026, 28.1.2012, p.1.

³ OJ No. L. 124, 25.4.2014, p. 1.

- (ii) by the substitution of “a licence” for “an integrated pollution prevention and control licence”,
- (c) in subsection (3), by the insertion of “or was exempted, in accordance with this Act, from being so required” after “by or under this Act”,
- (d) by the insertion of the following subsection after subsection (3):

“(3A) Where a grant of permission has been issued, or an order under section 181(2)(a) has been made, in respect of a proposed development comprising or for the purposes of an activity in respect of which a licence under Part IV of the Act of 1992 is required, and the application for permission in respect of the development was not accompanied by an environmental impact assessment report and the planning authority or the Board did not require the submission of an environmental impact assessment report, the planning authority or the Board shall, on a request in that behalf made to it by –

 - (a) the applicant for the grant of permission, or
 - (b) in a case where an order has been made under section 181(2)(a), the applicant for the licence under Part IV of the Act of 1992 in respect of the activity concerned,

also provide written confirmation to the applicant concerned that an environmental impact assessment in respect of the development is not required by or under this Act, or was exempted, in accordance with this Act, from being so required.”,
- (e) by the substitution of the following subsection for subsection (4):

“(4) Where a planning authority or the Board receives a notice and request from the Environmental Protection Agency under section 87(1D)(a) or 87(1E)(a) of the Act of 1992, the planning authority or Board shall –

 - (a) comply with the request within the period specified in the request, and
 - (b) enter into consultations, as referred to in section 87(1D)(c) or 87(1E)(c), as the case may be, with the Environmental Protection Agency.”,
 - (f) in subsection (5)(c), by the substitution of “a licence” for “an integrated pollution prevention and control licence”, and
 - (g) in subsection (6), by the substitution of “a licence under Part IV” for “integrated pollution prevention and control licence”.

Amendment of section 181 of Act of 2000

4. Section 181 of the Act of 2000 is amended –

(a) in subsection (2A) –

- (i) in paragraph (b), by the insertion of “, other than where a declaration has been made under paragraph (ba)(i),” after “the Minister concerned shall”,
- (ii) by the insertion of the following paragraphs after paragraph (b):

“(ba) Where a Minister concerned is satisfied that the carrying out of a proposed development is for the sole purpose of responding to a civil emergency, he or she may –

- (i) declare that the proposed development is exempt from a requirement under paragraph (b), arising only on the basis that an environmental impact assessment of the proposed development is required, to prepare an application for approval and apply to the Board for such approval, or
- (ii) declare that the proposed development is exempt from a requirement under paragraph (c) to prepare an environmental impact assessment report in respect of the development and include such report with an application to the Board under paragraph (b),

if the Minister considers that the application of the requirement concerned would have an adverse effect on that purpose.

(bb) Notice of a declaration made under paragraph (ba) shall, as soon as may be, be published in *Iris Oifigiúil* and in at least one daily newspaper published in the State.”,

- (iii) in paragraph (c), by the insertion of “or a declaration is made under paragraph (ba)(ii)” after “under subsection (2I)”,
 - (iv) in paragraph (e), by the insertion of “, except where a declaration is made under paragraph (ba)(i),” after “shall not”, and
 - (v) in paragraph (f), by the insertion of “or a declaration is made under paragraph (ba)(ii)” after “or subsection (2I)”,
- (b) in subsection (2T), in paragraph (a)(i), by the substitution of “or, in respect of a proposed development not directly connected

with or necessary to the management of a European site, would be likely to have a significant effect either individually or in combination with other plans or projects on a European site” for “or an adverse effect on the integrity of a European site”, and

- (c) in subsection (2W), in paragraph (a), by the substitution of “or, in respect of a proposed development not directly connected with or necessary to the management of a European site, its likely significant effect either individually or in combination with other plans or projects on a European site” for “or adverse effect on the integrity of a European site”.

Amendment of section 181A of Act of 2000

5. Section 181A of the Act of 2000 is amended –

- (a) in subsection (1) –
 - (i) by the substitution of “Subject to section 181B(4) and (4A)” for “Subject to section 181B(4)”, and
 - (ii) by the substitution of the following paragraph for paragraph (b):

“(b) identified as likely to have significant effects on the environment in accordance with section 176 or, in respect of such development not directly connected with or necessary to the management of a European site, likely to have a significant effect either individually or in combination with other plans or projects on a European site in accordance with section 177U.”, and
- (b) in subsection (2), by the substitution of “Subject to section 181B(4) and (4A)” for “Subject to section 181B(4)”.

Amendment of section 181B of Act of 2000

6. Section 181B of the Act of 2000 is amended –

- (a) in subsection (2), by the deletion of paragraph (d),
- (b) in subsection (3)(a), by the deletion of “or adverse effects, if any, of the proposed development on the integrity of a European site”,
- (c) by the substitution of the following subsection for subsection (4):

“(4) The Minister for Defence may, where he or she is satisfied that a proposed development or part of a proposed development is for the sole purpose of national defence, declare that the proposed development or relevant part of the proposed development is exempt from a requirement under

section 181A(1), arising only on the basis that an environmental impact assessment of the proposed development is required, to apply for approval and prepare an environmental impact assessment report, if he or she considers that the application of section 181A or 181C would have adverse effects on such purpose.”,

(d) by the insertion of the following subsection after subsection (4):

“(4A) A Minister of the Government may, where he or she is satisfied that a proposed development or part of a proposed development is for the sole purpose of responding to a civil emergency, declare that the proposed development or relevant part of the proposed development is exempt from a requirement under section 181A(1), arising only on the basis that an environmental impact assessment of the proposed development is required, to apply for approval and prepare an environmental impact assessment report, if he or she considers that the application of section 181A or 181C would have adverse effects on such purpose.”,

(e) in subsection (5), by the deletion of “or (4)”, and

(f) by the insertion of the following subsection after section (5):

“(5A) Notice of any exemption granted under subsection (4) or (4A) shall, as soon as may be, be published in *Iris Oifigiúil* and in at least one daily newspaper published in the State.”.

Amendment of section 181C of Act of 2000

7. Section 181C of the Act of 2000 is amended, in subsection (3), by the substitution of the following paragraph for paragraph (a):

“(a) to make a determination of whether a development of a class specified in regulations made under section 181(1)(a) which it proposes to carry out or have carried out is likely to have significant effects on the environment in accordance with section 176 or, in respect of such a development not directly connected with or necessary to the management of a European site, is likely to have a significant effect either individually or in combination with other plans or projects on a European site in accordance with section 177U (and inform the applicant of the determination), or”.



GIVEN under my Official Seal,
20 December, 2022.

DARRAGH O'BRIEN,
Minister for Housing, Local Government and Heritage.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations are made under section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving further effect to Article 1(3) of the Environmental Impact Assessment Directive; giving further effect to Article 6(3) of the Habitats Directive; and aligning the Planning and Development Act with the Environmental Protection Agency Act.

The amendments to Sections 181(2A) and 181B will facilitate a Minister of the Government granting an exemption to a development or part of a development, the subject of Section 181(1) Regulations or a Section 181(2) Order, which has the response to civil emergencies as its sole purpose, and has been identified as likely having significant effects on the environment, from the requirement to apply for approval to An Bord Pleanála or to submit an environmental impact assessment report to An Bord Pleanála, where the Minister is satisfied that the application of sections 181(2A) to (2AA) – relating to section 181(2) Orders, and sections 181A to 181C – relating to section 181(1) Regulations development would have adverse effects on such purpose. The amendments will also remove the exemption provided at Sections 181B(2)(d) and 181B(4)(b) from the requirement to screen for Appropriate Assessment.

The amendments to Section 181(2T), 181(2W), 181A and 181C will ensure that the existing transposition provisions in relation to the test for screening for Appropriate Assessment, is consistent with Article 6(3) of the Habitats Directive.

The amendments to Section 173A will align the Planning and Development Act with the Environmental Protection Agency Act and will continue the facilitation of interaction between An Bord Pleanála and the Environmental Protection Agency and applicants where EIA is required for a development and an EPA licence is also required for the related activity.

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